

REMARKS/ARGUMENTS

The Examiner's attention to the present application is noted with appreciation.

In the Office Action dated April 10, 2003, paragraph 1, the Examiner stated that the Information Disclosure Statement filed August 26, 2001 (Paper No. 6) fails to comply with 37 CFR 1.97, 1.98, and MPEP § 609 because it does not include publication dates or patent numbers for the references "Baby Bottle Dip", "Magic Fizz Paint", "Fun Dip" and "Muecas". The patent numbers and publication dates for these references are not known, and were not obtainable, but were disclosed due to the applicants desire to closely follow its duty to disclose. Because the dates and numbers are nonexistent or unavailable, these references should not necessarily be considered by the examiner as prior art. Nevertheless, applicant believes the present invention is patentable over the art cited in these references. Applicant's new claim 75 requires "said handle portion and said body portion comprising, in combination, an individual figurine". None of the above-mentioned references disclose a handle portion in combination with lower portion making an individual figurine that results in a flowable confectionery.

In paragraph 2 of the Office Action, the Examiner objected to claim 34 under 37 CFR 1.75 as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claim 34 has been cancelled.

In paragraphs 3 and 4 of the Office Action, the Examiner rejected claims 33-37 under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention in the use of the term "human-like". The Examiner questioned the distinction between "human-like" and "humanoid". The term "human-like" has been cancelled and the term "humanoid" has been substituted for every use of the term "human-like" in the claims.

In paragraphs 5, 6 and 7 of the Office Action, the Examiner rejected claims 1, 2, 12-15, 23-25, 27,38, 48-52, 60-62, and 64 under 35 U.S.C § 102 as being anticipated by Professional Candy Buyer. The claims were rejected as evidenced by the Candy Ware House and Lucasworld websites and as evidenced by the Sour Punker Pops which have a sugar based lollipop and a sugar/silicone dioxide/flavor agent based powder that is licked and placed in the powder in the container. Claims 1-74 have been

cancelled. New claim 75 recites a confectionery set comprising: a “handle portion and said body portion comprising, in combination, an individual figurine.” Sour Punker Pops, on the other hand, as disclosed by the websites of Candy Ware House and Lucasworld, does not disclose an individual figurine that is completed with the disposition of the sugar-based lollipop into the agent based powder. Accordingly, it is believed that claim 75 is allowable over Candy Ware House and Lucasworld.

Regarding new claim 76, this claim is dependent on claim 75 and describes a stand-alone figurine. A stand-alone figurine is one that does not need support for placement. Accordingly this claim is believed to be allowable over Candy Ware House and Lucasworld.

Regarding new claims 77-102 these claims are dependent on claim 75, which is believed to be allowable. Accordingly, these claims are also believed to be allowable over Candy Ware House and Lucasworld.

In paragraphs 8 and 9 of the Office Action, the Examiner rejected claims 1, 2, 7, 8, 12-14, 18-27, 38, 43, 44, 48-51, 55-64, 65, 66, and 67 under 35 U.S.C § 102(b) as being anticipated by Bobis (U.S. Patent No. 5,354,191). Claims 1-74 have been cancelled. New claim 75 discloses a confectionery set with a container that includes a flowable confectionery with a handle portion in combination with the lower portion that comprises an “individual figurine”. Bobis, on the other hand, discloses a molding apparatus, with a handle, for forming, preparing and eating frozen food products, the frozen food product then edible with the reservoir catching any liquid that melts off of the frozen food product. In disclosing “any type of handle”, Bobis does not disclose a complimentary portion of a figurine. Accordingly, it is believed that the new claim 75 is allowable over Bobis.

Regarding new claim 76, this claim is dependent on claim 75 and describes a stand-alone figurine. A stand-alone figurine is one that does not need support for placement. Accordingly this claim is believed to be allowable over Bobis.

Regarding new claims 77-102 these claims are dependent on claim 75, which is believed to be allowable. Accordingly, these claims are also believed to be allowable over Bobis.

In paragraphs 10 and 11 of the Office Action, the Examiner rejected claims 1, 7, 8, 22-26, 38, 43, 44, 59-63, and 65 under 35 U.S.C § 102(b) as being anticipated by Jessop (GB Patent No. 2,093,433). Claims 1-74 have been cancelled. Applicant's new claim 75 describes a "handle portion and said body portion comprising, in combination, an individual figurine." Jessop, in contrast, discloses a lollipop with an exterior handle and a container which conforms to the shape of the lollipop. Jessop does not disclose an interactive shape, nor any flowable confectionery disposed within the container. In disclosing "any type of handle", Jessop does not disclose a complimentary portion of a figurine. Accordingly, it is believed that new claim 75 is allowable over Jessop.

Regarding new claim 76, this claim is dependent on claim 75 and describes a stand-alone figurine. A stand-alone figurine is one that does not need support for placement. Accordingly this claim is believed to be allowable over Jessop.

Regarding new claims 77-102 these claims are dependent on claim 75, which is believed to be allowable. Accordingly, these claims are also believed to be allowable over Jessop.

In paragraphs 12 and 13 of the Office Action, the Examiner rejected claims 1-3, 7, 8, 12-14, 18-26, 38, 39, 43, 44, 48-51, 55, 56, 59-63, 65, 66, 70, 71 and 74 under 35 U.S.C § 102(b) as being anticipated by Coconi (WO 9,918,011). Claims 1-74 have been cancelled. New claim 75 describes a confectionery set with a container that includes a flowable confectionery and comprises "an individual figurine." Coconi, in contrast, discloses a support for ice-cream or frozen food products disposed in a wrapper that is made of a paper-like material. This support is neither an individual figurine, nor does it have a flowable confectionery within the container. Accordingly, it is believed that new claim 75 is allowable over Coconi.

Regarding new claim 76, this claim is dependent on claim 75 and describes a stand-alone figurine. A stand-alone figurine is one that does not need support for placement. Accordingly this claim is believed to be allowable over Coconi.

Regarding new claims 77-102 these claims are dependent on claim 75, which is believed to be allowable. Accordingly, these claims are also believed to be allowable over Coconi.

In paragraphs 14 and 15 of the Office Action, the Examiner rejected claims 1, 2, 7-9, 12-19, 22-25, 27, 38, 43-45, 48-62, 64-66, 68, and 70-72 under 35 U.S.C § 102(b) as being anticipated by Baker (WO 0,019,803). Claims 1-74 have been cancelled. New claim 75 describes “a handle portion and said body portion comprising, in combination, an individual figurine”. Baker, on the other hand, discloses a lid and a separate utensil for dispensing the flowable confectionery in the container. For example, in one configuration, the separate utensil is in the form of a paint brush, and the can holding the flowable confectionery is in the shape of a paint can. In another configuration, the edible portion is in the shape of a mummy, and the container is a sarcophagus. Accordingly, it is believed that new claim 75 is allowable over Baker.

Regarding new claim 76, this claim is dependent on claim 75 and describes a stand-alone figurine. A stand-alone figurine is one that does not need support for placement. Accordingly this claim is believed to be allowable over Baker.

Regarding new claims 77-102 these claims are dependent on claim 75, which is believed to be allowable. Accordingly, these claims are also believed to be allowable over Baker.

In paragraphs 16 and 17 of the Office Action, the Examiner rejected claims 1, 2, 7-9, 12-14, 22-26, 38, 43-45, 48-51, 59-63, 65, 66, 68, 70-72 under 35 U.S.C § 102(b) as being anticipated by Coleman (U.S. Patent No. 5,370,884). Claims 1-74 have been cancelled. New claim 75 teaches a confectionery set comprising “a body portion disposed directly below said handle portion and removably positionable within said container.” Coleman, in contrast, discloses a lollipop disposed on top of the container, and the handle disposed within the container. In addition, Coleman, discloses loose candy or gum, not a flowable confectionery in which to dip the body of the invention. Accordingly, it is believed that a new claim 75 is allowable over Coleman.

Regarding new claim 76, this claim is dependent on claim 75 and describes a stand-alone figurine. A stand-alone figurine is one that does not need support for placement. Accordingly this claim is believed to be allowable over Coleman.

Regarding new claims 77-102 these claims are dependent on claim 75, which is believed to be allowable. Accordingly, these claims are also believed to be allowable Coleman.

In paragraphs 18 and 19 of the Office Action, the Examiner rejected claims 1, 7-11, 38, and 43-47 under 35 U.S.C § 102(e) as being anticipated by Manzone (U.S. Patent No. 6,159,492). Claims 1-74 have been cancelled. New claim 75 discloses “a handle portion and said body portion comprising, in combination, an individual figurine.” Manzone, in contrast, discloses a medication incorporated into a lollipop held in a container with a childproof cap with a locking mechanism. Accordingly, it is believed that claim 75 is allowable over Manzone.

Regarding new claim 76, this claim is dependent on claim 75 and describes a stand-alone figurine. A stand-alone figurine is one that does not need support for placement. Accordingly this claim is believed to be allowable over Manzone.

Regarding new claims 77-102 these claims are dependent on claim 75, which is believed to be allowable. Accordingly, these claims are also believed to be allowable Manzone.

In paragraphs 20-22 of the Office Action, the Examiner rejected claims 3-6, 39-42 under 35 U.S.C. § 103(a) as being unpatentable over Baker (WO 0,019,803) as applied to claims 1, 2, 7-9, 12-19, 22-25, 27, 38, 43-45, 48-62, 64, 66, 68, and 70-72 in view of Hart (U.S. Patent No. 6,054,158). Claims 1-74 have been cancelled. New claim 75 recites “a non-edible handle portion disposed directly above said container” and “a body portion disposed directly below said handle portion and removably positionable within said container” and “said handle portion and said body portion comprising, in combination, an individual figurine.” Baker discloses a separate coatable utensil and does not disclose a combination of the handle portion and the body portion comprising an individual figurine. Hart discloses an edible portion and a non-edible handle, however this is one solid figurine, not two portions that come together to form a figurine. Hart does not disclose the use of a confection, and the cover is a small separate piece that does not act as part of the figurine. Therefore, an ordinary person skilled in the art would not combine the two, and if one did combine the separate utensil from Baker and the solid portion from Hart, the result would be one solid, separate figurine, not the present invention where the figurine is

made of the handle portion in combination with the container. Accordingly, it is believed that claim 75 is allowable over Baker in view of Hart.

Regarding new claim 76, this claim is dependent on claim 75 and describes a stand-alone figurine. A stand-alone figurine is one that does not need support for placement. Accordingly this claim is believed to be allowable over Baker in view of Hart.

Regarding new claims 77-102 these claims are dependent on claim 75, which is believed to be allowable. Accordingly, these claims are also believed to be allowable over Baker in view of Hart.

In paragraphs 23 and 24 of the Office Action, the Examiner rejected claims 10, 11, 46, 47, 69, 73 under 35 U.S.C. 103(a) as being unpatentable over Baker (WO 0,019,803) as applied to claims 1, 2, 7-9, 12-19, 22-25, 27, 38, 43-45, 48-62, 64-66, 68, 70-72 above, further in view of Manzone et al. (U.S. Patent No. 6,159,492). Claims 1-74 have been cancelled. New claim 75 recites "a handle portion and said body portion comprising, in combination, an individual figurine." Baker discloses a separate edible body portion on a handle that is disposed within a container, which creates a separate figure (e.g. vampire edible body portion is placed into the container, a coffin). The body and the figure do not combine to make a single individual figurine. Manzone discloses a medicated lollipop disposed in a container. Therefore, these would not ordinarily be combined; one is for medication, the other a candy. However, if they were combined the result would be a separate figure inside a container. The container and candy would not combine with the handle to form the figurine. Accordingly, it is believed that claim 75 is allowable over Baker in view of Manzone.

Regarding new claim 76, this claim is dependent on claim 75 and describes a stand-alone figurine. A stand-alone figurine is one that does not need support for placement. Accordingly this claim is believed to be allowable over Baker in view of Manzone.

Regarding new claims 77-102 these claims are dependent on claim 75, which is believed to be allowable. Accordingly, these claims are also believed to be allowable over Baker in view of Manzone.

In paragraphs 25 and 26 of the Office Action, the Examiner rejected claims 28, 29, 31, 33, and 35 under 35 U.S.C. 103(a) as being unpatentable over Baker (WO 0,019,803) in view of Hart et al. (U.S.

Patent No. 6,054,158). New claim 75 recites “a non-edible handle portion disposed directly above said container,” “a body portion disposed directly below said handle portion and removably positionable within said container,” and said handle portion and said body portion comprising, in combination, an individual figurine.” Baker discloses a separate coatable utensil, where the utensil may be placed in a slot in the lid, but not a combination including a collar. Baker also discloses the ability to use shrink wrap to connect the separate utensil to the container. In addition, Baker does not disclose a combination of the handle portion and the lower portion of the container comprising an individual figurine, nor the edible body. Hart discloses an edible portion and a non-edible handle, however Hart is one solid figurine, not two portions that come together to form a figurine. Hart does not disclose the use of a flowable confection, and the cover is a small separate piece that does not act as part of the figurine. Therefore, an ordinary person skilled in the art would not combine the two devices. If the two were combined, the result would be a separate utensil inserted into a slot in the lid of the container, not disposed within the flowable confectionary. Accordingly, it is believed that claim 75 is allowable over Baker in view of Hart.

Regarding new claim 76, this claim is dependent on claim 75 and describes a stand-alone figurine. A stand-alone figurine is one that does not need support for placement. Accordingly this claim is believed to be allowable over Baker in view of Hart.

Regarding new claims 77-102 these claims are dependent on claim 75, which is believed to be allowable. Accordingly, these claims are also believed to be allowable over Baker in view of Hart.

In paragraph 27 of the Office Action, the Examiner stated that Hart et al. (U.S. Patent No. 6,054,158) is relied on as evidence of providing a lollipop wherein the edible portion comprises a body part and the handle comprises a head. Therefore, the Examiner stated, it would have been obvious to modify the handle/edible portion of the Professional Candy Buyer such that the handle portion comprises a human head with the edible portion comprising a human body portion. Applicant’s new claim 75 recites a “handle portion and said body portion comprising, in combination, an individual figurine.” Neither Hart nor Professional Candy Buyer discloses a handle portion and body portion, in combination, that comprises an individual figurine. Therefore, combining Hart and the Professional Candy Buyer would not

be obvious to an ordinary person skilled in the art. If Hart and the Professional Candy Buyer were combined, the result would be a figure inserted into a confection, and hidden by the container, but not detectable as an individual figurine resulting from the combination of a handle and body portion. Accordingly, it is believed that claim 75 is allowable over Hart in view of the Professional Candy Buyer.

Regarding new claim 76, this claim is dependent on claim 75 and describes a stand-alone figurine. A stand-alone figurine is one that does not need support for placement. Accordingly this claim is believed to be allowable over Hart in view of the Professional Candy Buyer.

Regarding new claims 77-102 these claims are dependent on claim 75, which is believed to be allowable. Accordingly, these claims are also believed to be allowable over Hart in view of the Professional Candy Buyer.

In paragraphs 28 and 29 of the Office Action, the Examiner rejected claims 32 and 36 under 35 U.S.C. 103(a) as being unpatentable over Baker (WO 0,019,803) in view of Hart et al. (U.S. Patent No. 6,054,158) as applied to claims 28, 29, 31, 33, and 35 above, further in view of Manzone et al. (U.S. Patent No. 6,159,492). Claims 1-74 have been cancelled. Applicant's new claim 75 recites a "handle portion and said body portion comprising, in combination, an individual figurine." Baker, on the other hand, discloses a separate utensil to be inserted into a flowable confection. Hart discloses a figure that is neither in a flowable confection nor is the handle portion and the body portion detachable to form a figurine. Manzone discloses a medicated lollipop inside a container that does not make a figurine. It would not be obvious to an ordinary person skilled in the art to combine these, however if they were combined, the result would be a separate figure hidden inside a container. The handle portion and the body portion, in combination, would not be an individual figurine, and therefore would not be the present invention. Accordingly, it is believed that claim 75 is allowable over Baker in view of Hart, further in view of Manzone.

Regarding new claim 76, this claim is dependent on claim 75 and describes a stand-alone figurine. A stand-alone figurine is one that does not need support for placement. Accordingly this claim is believed to be allowable over Baker in view of Hart, further in view of Manzone.

Regarding new claims 77-102 these claims are dependent on claim 75, which is believed to be allowable. Accordingly, these claims are also believed to be allowable over Baker in view of Hart, further in view of Manzone.

In paragraphs 30 and 31 of the Office Action, the Examiner rejected claims 30 and 37 under 35 U.S.C. 103(a) as being unpatentable over Baker (WO 0019803) in view of Hart et al. (U.S. Patent No. 6,054,158) as applied to claims 28, 29, 31, 33, 35 above, further in view of Coleman et al. (U.S. Patent No. 5,913,453). Claims 1-74 have been cancelled. Applicant's new claim 75 recites "said handle portion and said body portion comprising, in combination, a single, individual figurine." Baker, in contrast, describes a separate utensil with an edible portion. Hart describes one solid figure, with no flowable confectionery. Coleman describes a lollipop and separate container. There is a place for the handle of the lollipop to rest in the container. The container has a place, away from the handle, which can hold candy or gum. A person with ordinary skill in the art would not combine these devices. However, if these devices were combined, the result would be a separate lollipop, in some shape where there is a holder for the handle. The result would not be the present invention, a handle portion in combination with a lower portion to form a figurine which is attachable and in a flowable confectionery. Accordingly, it is believed that claim 75 is allowable over Baker in view of Hart, further in view of Coleman.

Regarding new claim 76, this claim is dependent on claim 75 and describes a stand-alone figurine. A stand-alone figurine is one that does not need support for placement. Accordingly this claim is believed to be allowable over Baker in view of Hart, further in view of Coleman.

Regarding new claims 77-102 these claims are dependent on claim 75, which is believed to be allowable. Accordingly, these claims are also believed to be allowable over Baker in view of Hart, further in view of Coleman.

In paragraphs 32 through 51 of the Office Action, the Examiner provisionally rejected claims 1-74 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over co-pending Application Serial No. 09/874,447. Applicant's Pending Application Serial No. 09/874,447 is unlike the present invention because it does not disclose a handle portion and a lower portion to form an

individual figurine. Applicant's new claim 75 recites "a handle portion and lower portion that combine to form an individual figurine."

In view of the above amendments and remarks, it is respectfully submitted that all grounds of rejection and objection have been avoided and/or traversed. It is believed that the case is now in condition for allowance and same is respectfully requested.

If any issues remain, or if the Examiner believes that prosecution of this application might be expedited by discussion of the issues, the Examiner is cordially invited to telephone the undersigned attorney for Applicant at the telephone number listed below.

Payment was initially made for 74 claims, Claims 1-74 have been canceled and 19 new claims are added herein to the application. It is believed that no additional claims fee is required. If it deemed otherwise, authorization is given to charge payment of any additional fees required, or credit any overpayment, to Deposit Acct. 13-4213.

Respectfully submitted,

By:



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